

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4073 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

RABARI SAKRABHAI LALABHAI

Versus

AGRICLUTURAL PRODUCE MARKET COMMITTEE

Appearance:

MR PK JANI for Petitioner

MR BS PATEL for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/09/96

ORAL JUDGEMENT

Rule. Mr. Patel, learned advocate appearing for
the respondent waives service of rule. With the consent
of both the learned advocates, this petition is taken up

for final hearing to day.

2. The petitioner a watchman serving under the respondent herein contends that his date of birth as recorded in his service book is that of 4th May, 1938 and, thus, he would reach the age of superannuation that is 60 years on 4th May, 1998. However, the petitioner has been retired from service with effect from 8th May, 1996 under the order dated 8th May, 1996 which is impugned herein.

3. Learned advocate Mr. Patel appearing for the respondent concedes that the birth date recorded in the petitioner's service book is that of 4th May, 1938 and the same has not been altered at any time. However, he submits that the petitioner's age recorded in the Voters' list is far more than the one which is recorded in the service book of the petitioner. He has further submitted that the petitioner has been asked to produce proof of his birth date which he has failed to do. Therefore, the petitioner who is supposed to have reached the age of 63 years is retired from service under the impugned order. It appears that the petitioner is an illiterate person and he does not have any proof of his date of birth which in all probabilities may not have been entered in the register of births either. Be it noted that the age recorded in the Voters' List is not a conclusive proof of one's age. In the circumstances, it is not permissible to the respondent not to act according to the date of birth recorded in the service book without altering the same in lawful manner. The impugned order dated 8th May, 1996 is, therefore, quashed and set aside. It is, however, clarified that it will be open to the respondent to refer the petitioner to the Medical Board for examination and to take proper action pursuant to the report of the Medical Board. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

Learned advocate Mr. Patel appearing for the respondents prays that this order be stayed for a period of two weeks so as to enable the respondents to approach the higher forum. Request is granted. Implementation of this order is stayed upto 24th September, 1996.

The respondents shall bear costs of this petition.

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